IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.MC.No. 3095 of 2007(K)

(C.P.NO.6 OF 2007 ON THE FILE OF THE JUDICAL FIRST CLASS MAGISTRATE COURT-I, CHENGANNUR)

PETITIONERS: ACCUSED NO. 2 & 3:

1. **K.H.SHARIF,**
   ARSHIL COTTAGE, MULAKUZHA MURI, MULAKUZHA VILLAGE,
   CHENGANNUR TALUK.

2. **ARSHIL SHARIF @ SAFIN (MINOR),**
   REPRESENTED BY HIS FATHER, 1ST PETITIONER
   K.H.SHARIF, ARSHIL COTTAGE, MULAKUZHA MURI,
   MULAKUZHA VILLAGE, CHENGANNUR TALUK.

BY ADV. SRI.S.MUHAMMED HANEEF

RESPONDENTS: COMPLAINANT:

1. **STATE OF KERALA, REP. BY**
   DEPUTY SUPERINTENDENT OF POLICE, CHENGANNUR.
   (CRIME NO.683 OF 2005 OF CHENGANNUR POLICE
   STATION), REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

2. **SUKUMARAN,**
   PRANKAMOOTTIL THEKKETHIL, MULAKUZHA VILLAGE,
   CHENGANNUR.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/10/2007 ALONG WITH CRL.M.C.NO.3283 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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Crl.M.C. Nos. 3095
& 3283 Of 2007

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Dated this the 26th day of October, 2007

ORDER

The facts of the case appear to me to be very strange and interesting. The 2nd respondent had filed a complaint before the Police against the petitioners (A1 to A5). A crime was registered. Investigation was conducted by the Police. Allegations were raised against all the accused persons- the petitioners herein, of having committed offences punishable under Section 323, 324 and 506(1) and Section 3(1)(x) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. Investigation was conducted by the Police. Final report was filed. In the final report, the Police alleged commission of offences punishable under Section 323 and 324 read with 34 IPC. The allegation under Section 3(1)(x) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act was not raised by the Police in the final report submitted by them. The learned Magistrate took cognizance on the final report filed by the Police. The case was registered as C.C.No.64/2006 before the Judicial First Class Magistrate Court – I, Chengannur.

2. Aggrieved by the final report submitted by the Police, the 2nd

respondent filed a private complaint before the learned Magistrate and the learned Magistrate took cognizance of the offence punishable under Section 3(1)(x) of the Schedule Caste and Schedule Tribes(Prevention of Atrocities) Act. Committal proceedings C.P.No.6/07 was registered by the learned Magistrate. The private complaint filed by the 2nd respondent/complainant (C.P.No.6/07) and the case initiated on the Police report (C.C.No.64/2006) continued parallely.

3. The petitioners/ accused and the 2nd respondent/complainant settled all their disputes. They applied for composition before the learned Magistrate and the learned Magistrate by order dated 21.8.07 in C.C.No.64/2006 accepted the composition of the said offences. The prosecution under Section 3(1)(x) of the Schedule Caste and Schedule Tribes(Prevention of Atrocities) Act initiated on the basis of the private complaint is pending before the learned Magistrate as C.P.No.6/2007. The parties have settled all their disputes amicably. The 2nd respondent has compounded the offence alleged in C.P.No.6/2007 that is the offence under Section 3(i)(x) allegedly committed by the petitioners.

4. The petitioners and the 2nd respondent find themselves in a very uncomfortable position in law. The offence under Section 3(1)(x) of the Schedule Caste and Schedule Tribes(Prevention of Atrocities) Act is not declared by law to be compoundable. Therefore Section 320 Cr.P.C is not applicable and the parties cannot apply for composition. The offence

alleged is a warrant offence triable by the Special Court(Sessions Court) under Section 14 of the Schedule Caste and Schedule Tribes(Prevention of Atrocities) Act. The complaint cannot be withdrawn also under section 257 Cr.P.C. Withdrawal under Section 321 Cr.P.C is not permissible now as the proceedings are at the committal stage and there is no prosecutor in charge of the case who can make request under Section 320 Cr.P.C. Helpless and desperate, the parties have come to this Court with a prayer to invoke the powers under Section 482 Cr.P.C to quash the proceedings, not withstanding the fact that the offence under Section 3(1)(x) is not, under law, compoundable.

5. I have considered all the relevant inputs. I am satisfied from the statements made at the Bar by the learned counsel for the petitioner and the 2nd respondent and the joint statement filed by them that the respondent has willingly and voluntarily settled his dispute with the petitioners and he has compounded the offences alleged against them. Normally cognizance can be taken only by a Court of Sessions in view of mandate under Sec.193 Cr.P.C. I am convinced that the parties have settled their disputes. Compelling them to continue with the prosecution would be unnecessary and would amount to failure and miscarriage of justice. In these circumstances, there is no specific provision of the statute which enables the parties to bring to premature termination the proceedings initiated between them in which cognizance by the Sessions

Court under Sec.193 Cr.P.C. has not been taken. Hence I am satisfied that premature termination of the prosecution be brought about by invoking the powers under Section 482 Cr.P.C.

6. The learned counsel, in these circumstances, rightly relies on the decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. The interests of justice may at times transcend the interest of mere law. That decision is authority for the proposition that notwithstanding the provisions of Section 320 Cr.P.C, the powers under Section 482 Cr.P.C can be invoked to bring about premature termination of such a prosecution.

7. Having considered all the relevant inputs, I am persuaded to agree that this is certainly a fit case where such extraordinary equitable discretion under Section 482 can or ought to be invoked to bring to premature termination C.P.No.6/07 initiated against the petitioners.

8. In the result, these Criminal Miscellaneous Cases are allowed. Further proceedings in C.P.No. 6 /2007 pending before the Judicial First Class Magistrate Court- I Chengannur against the petitioners herein is hereby quashed.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE